



New Jersey Department of Children and Families Policy Manual

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SUBJECT: Mediation and Due Process

EFFECTIVE DATE: August 22, 1986

REVISED: January 9, 2008

A. **OBJECTIVE:**

To provide a process which shall be available for students ages 3 through 21 years participating in Department of Human Services (DHS) and Department of Children and Families (DCF) State Facility Education Act (SFEA) programs when there is a disagreement regarding identification, classification, evaluation, educational placement, the provision of a free, appropriate public education or disciplinary action.

B. **STANDARDS:**

1. When disputes arise relating to students ages 3 to 21 years, regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education, mediation shall be available in accordance with N.J.A.C. 6A:14-2.6 and N.J.S.A. 1:6A.
2. For students ages 3 through 21 years, a due process hearing may be requested pursuant to N.J.A.C. 6A:14-2.7 and N.J.S.A. 1:6A, when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education or disciplinary action

C. **PROCEDURES:**

Mediation

1. Mediation is a voluntary process that is available to resolve disputes regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education, but it shall not be utilized to deny or delay the right to request a due process hearing.
 - a. The Director, Office of Education (OOE), or the OOE's Administrative Practice Officer (APO) shall be immediately notified when a request for mediation is received.
 - b. Mediation may be agreed to by a parent and the OOE, in place of the resolution meeting described under the "Resolution Meeting" section of this policy.
 - c. The OOE shall advise a parent who initially refuses to use the mediation process that he/she has the right to contact and/or meet with a State mediator to discuss the benefits of mediation.
2. Mediation is available from the New Jersey Department of Education (DOE) through the Office of Special Education Programs.
 - a. A written request for mediation shall be submitted to the Director of the Office of Special Education Programs within the New Jersey DOE.
 - b. The party initiating the request for mediation shall send the other party a copy of the written request which shall note that a copy has been forwarded to the other party.
 - c. The mediation request shall specify the student's name, the student's address, the student's date of birth, the name of the school the student is attending, the issue(s) in dispute and the relief sought.
3. A mediation conference, consistent with New Jersey laws and regulations, shall be scheduled within 15 calendar days after receipt of the written request and shall be completed within 30 days of the request.
 - a. At the mediation conference, the issues shall be discussed, and the options for resolution shall be explored.
 - b. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute.
 - c. Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect

to the needs of students with disabilities or with respect to the student that is the subject of the mediation.

4. Discussions occurring during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings.
 - a. Prior to the commencement of the mediation conference, the mediator may, at his/her discretion and upon request of a party, require that the parties sign a confidentiality pledge to ensure that all discussions that occur during the mediation remain confidential.
 - b. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation.
5. When appropriate, the mediator may adjourn the mediation to another date, but not more than 45 days from the date of the request for a mediation conference, at the request of the parties to obtain additional information or explore options.
6. The mediator may terminate the mediation if in his/her judgement the parties are not making progress toward resolving the issue(s) in dispute.
7. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting, and no other record of the mediation, including audio recording, shall be made.
8. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement, prepared by the mediator at the conference and signed by each party. Mediation agreements, however, shall not address special education or related services for more than one school year.
9. Signed agreements resulting from mediation conducted according to NJAC 6A:14-2.6 are binding on the parties.
 - a. If either party fails to comply with any provision of the agreement, either party may seek enforcement of the agreement in a court of appropriate jurisdiction.
 - b. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement by writing to the Director of the Office of Special Education Programs, New Jersey DOE, no later than 90 calendar days from the date that the action identified in the agreement was required to have occurred or been completed.

- c. If there are multiple clauses in the agreement, the 90 day timeframe to seek enforcement shall be measured separately for each clause, based on the date by which each is required by the agreement to occur.
 - d. The Office of Special Education Programs shall make a determination regarding the implementation of the agreement and may, as appropriate, order the OOE to implement the agreement or part of the agreement.
 - e. If any part of the mediation agreement is modified by subsequent accord of the parties, enforcement may not be sought with respect to that part of the agreement.
10. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law (OAL) according to N.J.A.C. 6A:14-2.7 as provided in 20 U.S.C. §1415 (k) as amended and supplemented (see N.J.A.C. 6A:14 - Appendix A).

Due Process

- 1. A due process hearing is an administrative hearing conducted by an administrative law judge which may be requested for students ages 3 through 21 years when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action.
 - a. In addition to the issues listed above, the DCF OOE, when responsible for the development of the student's Individualized Education Program (IEP), may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation or to release student records.
 - b. The DCF OOE shall request a due process hearing when a decision is made to deny a written parental request for an independent evaluation.
- 2. A request for a due process hearing shall be made in writing to the Director of the Office of Special Education Programs, New Jersey DOE.
 - a. The party initiating the due process hearing shall send to the other party a copy of the written request which shall note that a copy has been sent to the other party.
 - b. The written request shall include the student's name, the student's address, the student's date of birth, and the name of the school the

student is attending and shall state the specific issue(s) in dispute, the relevant facts and the relief sought.

- c. The request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing a due process hearing may be extended by an administrative law judge if:
 - 1) The OOE specifically misrepresented to the parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or
 - 2) The OOE withheld information that was required by law to be provided to the parent.
3. Except when a response is required to be filed by the OOE pursuant to 4. below, the following procedures shall be implemented:
 - a. The Director, OOE, or the OOE's APO shall be immediately notified when a request for a due process hearing is received.
 - b. Within 10 days of the filing of a request for a due process hearing, the OOE shall provide a written response, specifically addressing the issue(s) raised in the request, to the party that requested the due process hearing.
4. When a parent has filed a request for a due process hearing or an expedited due process hearing (for disciplinary issues) against the OOE and/or one of its programs and the OOE has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the following procedures shall be implemented:
 - a. The Director, OOE, or the OOE's APO shall be immediately notified when a request for a due process hearing is received.
 - b. The OOE shall provide a written response to the parent within 10 days of receiving the petition.
 - c. The written response shall include:
 - 1) An explanation of why the OOE proposed or refused to take the action raised in the parent's request for a due process hearing;
 - 2) A description of the other options that the IEP team considered and the reasons those options were rejected;
 - 3) A description of each evaluation procedure, assessment, record, or report the OOE used as a basis for the proposed or refused action; and

- 4) A description of the factors that are relevant to the OOE's proposal or refusal.
5. The request for a due process hearing, or an expedited due process hearing for disciplinary issues, serves as notice to the respondent of the issues in the due process complaint. The respondent may assert, however, that the notice does not meet the requirements of 20 U.S.C. §1415 (see N.J.A.C. 6A:14 - Appendix A), and is, therefore, not sufficient. Such notice will be considered sufficient unless the respondent notifies the Office of Special Education Programs and the complaining party (petitioner) in writing, within 15 days of the receipt of the request for a due process hearing.
 - a. The sufficiency challenge will be forwarded to the OAL, and within five days of receipt of the written objection, an administrative law judge will determine whether the notice meets the sufficiency requirements.
 - b. The administrative law judge will notify the parties in writing of his/her determination.
 - c. If the notice is determined sufficient, the timelines for resolution activities and the due process hearing will continue.
 - d. If the notice is determined to be insufficient, the administrative law judge may dismiss the case and the petitioner may re-file with the Office of Special Education Programs, or the judge may grant permission to amend the request.
 - 1) If the case is dismissed and the petitioner files a new request for a due process hearing, all applicable timeframes and procedures set forth in these procedures shall commence anew.
 - 2) If the judge allows the petitioner to amend the request for a due process hearing as part of the sufficiency challenge, the applicable timeframes and procedures shall recommence from the time of the judge's determination.
6. As appropriate, mediation and a due process hearing shall be made available to the parties by the Office of Special Education Programs upon the receipt of a request for a due process hearing.
7. After a petition requesting a due process hearing is submitted to the Office of Special Education Programs, it may only be amended with the consent of the other party, or if an administrative law judge allows the party to amend the petition.

- a. If a petition is amended with the consent of the OOE, the OOE shall be afforded the opportunity to hold a resolution meeting in accordance with the “Resolution Meeting” section of this policy to resolve the issues raised in the amended petition. The timeframes for holding and completing this resolution meeting shall begin on the date the amended petition is filed with the Office of Special Education Programs.
 - b. If a petition is amended by order of an administrative law judge, such order shall be issued no later than five days prior to the date the matter is heard. No resolution meeting is required to address the issues raised in the amended petition.
8. A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the conclusion of the resolution period described in items 2 and 3 of the “Resolution Meeting” section of this policy unless specific adjournments are granted by the administrative law judge in response to requests by either party to the dispute.
 - a. The 15- or 30-day resolution period as described in items 2 and 3 of the “Resolution Meeting” section of this policy shall end either at the expiration of the applicable 15- or 30-day time period; or
 - b. when both parties notify the Office of Special Education Programs, in writing, that they have waived the resolution meeting and intend to proceed directly to a due process hearing.
9. The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination whether the student received a free, appropriate public education (FAPE). In matters alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:
 - a. Impeded the student’s right to a FAPE;
 - b. Significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
 - c. Caused a deprivation of educational benefits.
10. The decision of the administrative law judge is final and binding on both parties and is to be implemented without undue delay unless stayed, according to N.J.A.C. 1:6A. Such decisions may be provided in an electronic form at the request of the parent.

11. If either party fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction. If the OOE, as the agency responsible for implementing the IEP, fails to implement a hearing decision of the OAL with respect to the student's program or services, a request for enforcement may be made by the parent(s) or adult student or the parent's attorney on behalf of the student.
 - a. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred.
 - b. The request shall include a copy of the decision issued by the OAL.
 - c. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur.
 - d. Upon receipt of this request, the OOE shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent.
 - e. The Office of Special Education Programs shall determine the implementation of the decision.
 - f. If it is determined that the OOE has failed to implement the decision or part of the decision, the Office of Special Education Programs shall order the OOE to implement the decision or part of the decision, as appropriate.
 - g. If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the decision.
12. Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree or emergent relief as part of a request for a due process hearing is granted by the OAL according to the "Emergent Relief" section of this policy or as provided in 20 U.S.C. §1415 (k) 4 as amended and supplemented (see N.J.A.C. 6A:14 - Appendix A).
 - a. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the

DCF OOE and the parents for the remainder of any court proceedings.

13. Any party may appeal the decision of an administrative law judge in a due process hearing.
 - a. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance the final decision.
 - b. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergent relief or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitations period for filing appeals, and are instead subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.
14. Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:
 - a. There shall be no resolution period or opportunity for a resolution meeting pursuant to the “Resolution Meeting” section of this policy with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and
 - b. The provisions of items 3, 4 and 5 of the “Due Process” section above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

Resolution Meeting

1. When a parent requests a due process hearing or expedited due process hearing, the OOE shall have an opportunity to resolve the matter in a resolution meeting before proceeding to a due process hearing.
 - a. In the case of a due process hearing request, the resolution meeting shall be held within 15 days of receiving the parent’s request.
 - b. In the case of an expedited due process hearing request, the resolution meeting shall be held within seven days of receiving the request.

- c. The resolution meeting shall not be audio or video recorded by either party unless both the OOE and the parent agree to record the meeting.
 - d. The resolution meeting shall be conducted with the parents, relevant members of the IEP team who have specific knowledge of the facts identified in the request, and the appropriate representatives from the DCF or DHS State facility education program.
 - e. A Regional Administrator or other identified OOE individual who is qualified to make decisions on behalf of the DCF OOE shall participate in the meeting.
 - f. The OOE or the DCF/DHS State facility education program shall not include its attorney unless the parent is accompanied by an attorney.
2. If a due process hearing request issue is not withdrawn or resolved to the satisfaction of the parent within 30 days of the receipt of the petition, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for a due process hearing.
 3. If the expedited due process hearing request issue is not resolved to the satisfaction of the parent within 15 days of receipt of the request, the Office of Special Education Programs shall transmit the case to the OAL for a due process hearing.
 4. If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.
 - a. Either party retains the right to void the agreement, in writing, within three business days of signing the agreement.
 - b. If the agreement is not voided within three business days, it is legally binding.
 - c. If either party fails to implement the written agreement, it is enforceable in any State court of competent jurisdiction or in the United States District court.
 - d. If a dispute arises over the voiding of a resolution meeting agreement, the matter shall be transferred to the OAL for a due process hearing.
 5. If the requirements of the resolution meeting described in items 1, 2 and 3 above, with respect to scheduling and conducting the meeting, are not adhered to, issues concerning those procedures shall be addressed in the

due process hearing and are not eligible to be addressed in a request for a complaint investigation pursuant to N.J.A.C. 6A:14-9.2.

6. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the Office of Special Education Programs.
 - a. If the parent has also requested mediation on his/her request for a due process hearing, the OOE may agree to mediation in lieu of a resolution meeting.
 - b. When the OOE agrees to mediation in lieu of a resolution meeting, a member of the OOE shall contact the Office of Special Education Programs to facilitate the scheduling of the mediation conference.
 - c. If the parties fail to participate in mediation within 30 days of the date the request for a due process hearing is submitted, the matter shall be transmitted to the OAL for a due process hearing with a notation that the parties declined a resolution meeting and requested mediation, but that the mediation conference failed to occur.
7. The parties may agree in writing to waive the resolution meeting and proceed directly to a hearing.
 - a. Parents may indicate on the request for a hearing that they desire to waive the resolution meeting.
 - b. A waiver shall be signed by both parties and forwarded to the Office of Special Education Programs.
 - c. Upon receipt of the signed waiver, the case shall be transmitted to the OAL for a hearing.
8. The parties shall notify the Office of Special Education Programs, in writing, of the result of the resolution meeting.
9. When the OOE files a request for a due process hearing, no resolution meeting shall be held, although the matter shall be mediated if the parties agree to mediation and, if necessary, shall be transmitted to the OAL for a hearing.

Expedited Due Process Hearings

1. In instances where the parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with

any decision regarding placement under 20 U.S.C. §1415 (k) (see N.J.A.C. 6A:14 - Appendix A) and its implementing regulations at 34 CFR 300.1 et seq., the parent may request an expedited hearing.

2. To remove a student with a disability when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and the DCF OOE cannot agree to an appropriate placement, the DCF OOE shall request an expedited hearing.
 - a. The administrative law judge may order a change in the placement for not more than 45 calendar days according to 20 U.S.C. §1415 (k) and its implementing regulations at 34 CFR 300.1 et seq.
 - b. The procedure in 20 U.S.C. §1415 (k) 3, pertaining to placement during appeals, may be repeated as necessary.
3. The request for an expedited hearing shall specify the reason is due to disciplinary action.
4. When a request for an expedited hearing is received, the Office of Special Education Programs shall acknowledge receipt of the request, provide information to the parent regarding free and low cost legal services, provide mediation (if it was requested by both parties in lieu of a resolution meeting) and transmit the case to the OAL according to the following:
 - a. A representative from the Office of Special Education Programs shall telephone the clerk of the OAL, who will provide a hearing date.
 - b. The expedited hearing shall be conducted and completed within 20 school days of receipt of the request by the Office of Special Education Programs.
 - c. The resolution meeting or mediation, if requested by both parties, shall be scheduled within seven days and completed within 15 days.
 - d. If the mediation results in agreement, the conclusions of the parties shall be incorporated into a written agreement prepared by the mediator at the mediation conference and signed by each party. The matter shall be considered settled and the agreement binding according to N.J.A.C. 6A:14-2.6 (d) 10.
5. Upon receiving the acknowledgement of the request from the Office of Special Education Programs, the parties shall complete the exchange of relevant records and information at least two business days before the hearing.

6. The expedited hearing shall result in a written decision being provided to the parties within 10 school days of the completion of the due process hearing without exceptions or extensions.
7. In reviewing a decision with respect to a manifestation determination, the administrative law judge shall determine whether the DCF OOE has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of 20 U.S.C. §1415 (k) and its implementing regulations at 34 CFR 300.1 et seq.
8. In reviewing a decision under 20 U.S.C. §1415 (k) and its implementing regulations to place the student in an interim alternative educational setting (IAES), the administrative law judge shall apply the standards in 20 U.S.C. §1415 (k) and its implementing regulations at 34 CFR 300.1 et seq.

Emergent Relief

1. Either party may apply in writing for a temporary order of emergent relief as part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter.
 - a. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergent relief.
 - b. The applicant shall provide a copy of the request to the other party which shall be noted on the request for emergent relief.
 - c. Emergent relief shall only be requested for the following issues:
 - 1) Issues involving a break in the delivery of services;
 - 2) Issues involving disciplinary action, including manifestation determinations and determinations of IAES's;
 - 3) Issues concerning placement pending the outcome of due process proceedings; and
 - 4) Issues involving graduation or participation in graduation ceremonies.
2. Prior to transmittal of a request for a due process hearing or an expedited hearing to the OAL, an application for emergent relief shall be made to the State Director of the Office of Special Education Programs.
3. After transmittal of a request for a due process hearing or an expedited hearing, any application for emergent relief shall be made directly to the OAL.

4. Emergent relief may be requested according to N.J.A.C. 1:6-12.1 and may be granted if the administrative law judge determines from the proofs that:
 - a. The petitioner will suffer irreparable harm if the requested relief is not granted;
 - b. The legal right underlying the petitioner's claim is settled;
 - c. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
 - d. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

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